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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,806	02/23/2004	Jan Roelof van der Meulen	1203.080	5460
7590	10/19/2005		EXAMINER	
Liniak, Berenato & White Ste. 240 6550 Rock Spring Drive Bethesda, MD 20817			QIN, JIANCHUN	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/782,806	MEULEN, JAN ROELOF VAN DER
	Examiner Jianchun Qin	Art Unit 2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 August 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 August 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>02/23/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al. (U.S. Pat. No. 4898061) in view of Enhoffer et al. (U.S. Pat. No. 6271449).

With respect to claim 1:

Cohen et al. teach a percussion musical instrument (see Abstract) comprising: a clave block (10) comprising a ridge body made of a solid material (col. 3, lines 19-25), said body having an open cavity therewithin defined solely by said material (col. 3, lines 33-41).

Cohen et al. do not mention expressly: a set of clave blocks, said bodies having substantially equal exterior dimensions and different volumes of said open cavities therewithin provided to generate musical tones of a variety of pitches.

Enhoffer et al. teach a set of clave blocks (10, col. 3, lines 33-39; col. 2, lines 41-42, lines 48-49), said bodies having substantially equal exterior dimensions and different volumes of open cavities (20) therewithin provided to generate musical tones of a variety of pitches (col. 2, lines 41-42, lines 48-49).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Enhoffer et al., to the invention of Cohen et al. in order to produce a set of clave blocks which have no difference in exterior dimensions but can be used to generate musical tones of different pitches (Cohen et al., col. 5, lines 14-19; Enhoffer et al., Abstract).

With respect to claims 2 and 3:

Cohen et al. and Enhoffer et al. do not mention expressly: said set includes three clave blocks including a low pitch clave block provided to generate a low pitch tone, a medium pitch clave block provided to generate a medium pitch tone and a high pitch clave block provided to generate a high pitch tone.

In view of the teaching of Cohen et al. and Enhoffer et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the combination of Cohen et al. and Enhoffer et al. to make three clave blocks corresponding to three different favorable values of pitch tone, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

For the reason given above, the combination of Cohen et al. and Enhoffer et al. also teaches the invention recited in claim 3.

With respect to claims 4-6:

The teaching of Cohen et al. further includes: said body of at least one of said clave blocks has a mounting ring (38); said body of each of said clave blocks is made of

plastic material (col. 2, lines 22-25); said body of each of said clave blocks is made by injection molding process (col. 2, lines 58-59).

With respect to claims 7 and 8:

The teaching of Enhoffer et al. further includes: said bodies of different volumes having different thickness of said solid material (col. 2, lines 41-42); said cavities include openings having different perimeters (col. 2, lines 41-42 and lines 48-49).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Enhoffer et al., to the invention of Cohen et al. in order to produce a set of clave blocks which have no difference in exterior dimensions but can be used to generate musical tones of different pitches (Cohen et al., col. 5, lines 14-19; Enhoffer et al., Abstract).

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Response to Arguments***

4. Applicant's arguments received 08/19/05 with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Claims 1-8 are rejected as new prior art references (U.S. Pat. No. 4898061 to Cohen et al. and U.S. Pat. No. 6271449 to Enhoffer et al.) have been found to teach the claimed invention. Detailed response is given in section 2 as set forth above in this Office Action.

***Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jianchun Qin  
Examiner  
Art Unit 2837

JQ   
October 11, 2005



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